

Testimony By The Honorable Justine Fox-Young

New Mexico
State Legislature

New Mexico
House of Representatives

Mr. Chairman and members of the committee, thank you for the invitation to testify today. My name is Justine Fox-Young and I currently serve in the New Mexico House of Representatives, representing District 30 in Bernalillo County. I am here today out of concern for the election process in New Mexico. Over the past couple of years I have run several of my own campaigns for state office and have been personally involved in election litigation to protect voters' rights. I have sponsored election reform legislation in several areas, including bills to require photo voter identification, set standards for provisional ballot counting, recount procedures and voting machine testing. As a result of voter registration fraud and of systemic problems with the election process, I am concerned that the integrity of the voting process has been compromised in New Mexico.

NM Voter Fraud As It Relates To Illegal Immigrants

Without access to a database of illegal immigrants, it is extremely difficult to quantify the problem of voting by these individuals in New Mexico. While myriad federal and state agencies may have data which could be compared with the state's database of registered voters, no such data are available to local election officials to check or validate voter registration rolls.

It is unmistakably clear; however, that the potential for fraud exists as it relates to illegal immigrants in the registration and voting process.

In the months leading up to the general election in 2004, there were over 150,000 new registrants in New Mexico, representing an increase in the total voting population of more than 15%. As this committee is acutely aware, employees of some 527 groups are incentivized to register as many voters as possible, regardless of their eligibility. As a result, the election in New Mexico was fraught with fraudulent voter registrations. The Bernalillo County Clerk reported more than three thousand fraudulent registrations and of these, media reports highlighted the registration of a couple of thirteen year olds, numerous felons as well as many duplicate registrations. This pervasive voter registration fraud seriously undermines public confidence in the election process. I have attached some materials exemplifying the types of registration fraud that were most common in the months leading up to the 2004 election. Examples are included in Exhibit A. Examples from the 2000 election are included as Exhibit B:

- A sampling of photocopies of new voter registration cards which were returned to the Bernalillo County Clerk as "undeliverable" by the USPS. It is important to note that these are registrations that made it through the clerk's initial checks and generated voter registration cards. They were only flagged as fraudulent as a matter of happenstance. The notations were made by staff of the clerk's office.

- Several examples of duplicate registrations submitted in close proximity to one another. Signatures on the registration forms do not match and appear to be forged.

- A letter from Ms. Susan Gordon of Albuquerque, the mother of a 15 year old who was registered to voter twice with copies of the voter registration cards. She and another parent, Albuquerque police officer Glen Stout, had to petition the clerk to have their children removed from the voter roster.

- A letter from Mr. James Dickey of Tucson, AZ who received a voter registration card despite the fact that he had not been a New Mexico resident for over nine years. He had to petition the clerk to be removed from the voter roster.

In each case, fortuitous circumstances led the county clerk to identify registrations as fraudulent. There is no systematic method for detecting fraud. Over 3,000 fraudulent registration forms were "caught" in Bernalillo County alone; however, there is no way of estimating the number of fraudulent registrations that made it into the voter roster. As the stakes in federal elections grow ever higher, particularly in swing states like New Mexico, the value of new registrants will continue to increase. As a result, agents of 527 groups will continue to find ways to generate more registrations, fraudulent or not. Despite efforts to regulate their activities at both the state and federal levels, economic incentives will continue to guide their practices. The as yet unregistered millions of voters, including the estimated 10-20 million illegal immigrants in the U.S., will by necessity be a target of 527 groups.

I am in no position to produce a credible figure of the number of illegal immigrants who are registered to vote; however, a Congressional Research Service report from September of 2005 indicated that more than 25 states did not require proof of legal presence in the United States in order to apply for and obtain a driver's license. Every individual who applies for a driver's license is asked if they want to register to vote. Voter rolls in the United States, particularly in states that allow illegal immigrants to obtain driver's licenses, are inflated by non-citizens who are registered to vote. How many in New Mexico?

In an AP Press article dated February 12, 2006, the New Mexico Secretary of Taxation and Revenue stated that "Since its [state law allowing foreign nationals to present a passport, tax id number or consular id card to obtain a license] passage, about 27,000 immigrants have obtained licenses." Governor Richardson has since directed the state Motor Vehicles Division to audit records to determine whether driver's licenses were issued based on

authentic documents. Of the sizable number of illegal immigrants who have obtained licenses, it is unclear how many submitted authentic documents. It is also unclear how many of these individuals were subsequently registered to vote.

Voter Identification

It is reasonable to assume that the individuals who are most suspicious of the voting process and perhaps least adept at navigating the system are new registrants. These are the individuals one might expect would have the most difficulty producing a form of voter identification. In 2004, the national polling firm Public Opinion Strategies conducted a survey of 500 new registrants in New Mexico.

Asked to produce some form of voter identification, 99% of new registrants said they would be able to show one. Less than one percent of new registrants believe that having to show identification would stop them from voting. A summary of key findings from this survey is attached as Exhibit C.

Here in New Mexico, the City of Albuquerque recently adopted an ordinance requiring that voters produce photo identification to vote in local elections. This rule was supported by Democrat Mayor Chavez and passed with 77% of the voters in favor of adopting the rule. Voters in neighboring Arizona overwhelmingly adopted Proposition 200 which, among other things, requires that voters present photo identification before voting.

And outside of New Mexico and Arizona, requiring a person to identify him or herself with photo identification before casting a ballot enjoys broad public support. The American Center for Voting Rights - Legislative Fund's polling in Pennsylvania and Missouri found that more than 80% of the population favors photo ID requirement in order to vote. Other state specific polls in Wisconsin and Washington have found similar levels of public support for voter identification requirements. Nationally, a recent Wall Street Journal/NBC poll found that more than eighty percent of U.S. citizens support the requirement that a person show a photo ID before they are allowed to cast a ballot.

Too often, it appears that state-enacted voter identification requirements

are being buried in unnecessary legal challenges. Lawsuits are currently pending in Indiana, Georgia, Missouri, New Mexico and Arizona challenging voter identification requirements enacted at the state and local levels. Federal legislation requiring voter identification for all voters in federal elections would improve American confidence in our elections and, would also help pave the way for the Justice Department to defend the constitutionality of voter identification laws. Federal voter identification would be a significant step forward to address the cynicism, skepticism and fraud that keep many American citizens on the sidelines and out of the voting booth.

According to the National Conference of State Legislatures, some 24 states currently require every voter to provide identification before casting a ballot and seven states currently require photo identification in order to vote. Legislation requiring voter identification to vote has been under consideration in at least 4 other states legislatures just this year. As this committee is well aware, Senator McConnell introduced a photo ID amendment as part of the debate of the immigration bill in the Senate, but that provision was ultimately not included in the Senate-passed version of the bill.

According to a recent article by the Wall Street Journal's John Fund, our neighbor Mexico, just south of where we sit today, has a more sophisticated national voter identification system than we do here in the United States. Despite the unproven claims of critics of identification that identification requirements somehow disproportionately burden the poor, Mexico manages to required photo identification from all of its citizens. John Fund also pointed out that many other countries, including Canada, France, Germany, Italy, Poland, Britain, India and South Africa require that a voter present photo identification before voting.

Professor John Lott, writing in a recent National Review article, tells us that "in Mexico, where about 40 percent of the population is below the poverty line, strict voter-ID rules have actually increased voter turnout. In the three presidential elections since the 1991 reforms, 68 percent of eligible citizens have voted, compared to only 59 percent in the three elections prior to the rule changes." This demonstrates that increased voter confidence can increase voter turnout - even in countries with significant portions of its population below the poverty line.

Conclusion

In New Mexico, the burden of determining eligibility to vote lies with the voter, and there will always be ways to perpetrate fraud. In the best of worlds, election officials are able to detect patterns in voter registration which lead them to particular techniques for verifying voter eligibility. For instance, they have learned to check the validity of addresses in multiple databases, i.e. the assessor, the USPS, etc. and they've learned to flag registrations with social security numbers that already exist in the voter roster; however, one need only change one digit in a social security number or add a suite number to an address to foil the system. A requirement that an individual registering to vote in a federal election provide proof of citizenship would bring about a significant improvement in the conduct of elections in that it would 1) help ensure that every eligible vote is counted; 2) provide a mechanism for verifying eligibility without unnecessarily impeding the voting process and 3) allow local officials the flexibility to implement changes in what is a constantly evolving process. A federal photo voter ID requirement would mark a significant step forward in improving the election process as well.